

**FEDERAL ELECTION COMMISSION****11 CFR Parts 107, 114, and 9008**

[Notice 1994-9]

**Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions****AGENCY:** Federal Election Commission.**ACTION:** Final rules; transmittal of regulations to Congress.

**SUMMARY:** The Federal Election Commission is revising its regulations governing publicly-financed Presidential nominating conventions. These regulations implement the Federal Election Campaign Act of 1971, as amended (FECA or the Act), and the Presidential Election Campaign Fund Act (Fund Act). The revisions update the provisions governing the audit and repayment process, and address vendor discounts, items provided for promotional consideration, legal and accounting expenses, civil penalties, and donations to host committees and municipalities. The changes also reorganize these rules and make them more consistent with the rules governing other publicly-financed committees.

**DATES:** Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d) and 26 U.S.C. 9009(c). A document announcing the effective date will be published in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Commission is publishing today the final text of revisions to its regulations at 11 CFR part 107, section 114.1, and part 9008, which concern the public financing of Presidential nominating conventions. The Commission had earlier sought comments on a previous attempt to revise the convention regulations by publishing a Notice of Proposed Rulemaking (1990 NPRM) on August 22, 1990. See Notice of Proposed Rulemaking, 55 FR 34267 (Aug. 22, 1990). Written comments were received from the Republican National Committee and the Democratic National Committee in response to the 1990 NPRM. Subsequently, the Commission decided to take no further action on that rulemaking until after the 1992 conventions had been held. See

Suspension of Rulemaking, 56 FR 14319 (April 9, 1991).

On August 12, 1993, the Commission issued a new Notice of Proposed Rulemaking (NPRM), thereby initiating a new rulemaking and again seeking comments on potential revisions to the convention regulations. 58 FR 43046 (Aug. 12, 1993). This NPRM differed significantly from the 1990 NPRM, as the Commission sought to take into account additional issues, including some derived from the 1988 and 1992 party conventions, and altered some of the proposals contained in the 1990 NPRM. Comments were received from the Republican National Committee, the Democratic National Committee, Jan Witold Baran, Common Cause, and the Internal Revenue Service. In response to a written request, a public hearing was held on October 27, 1993. Two witnesses presented testimony on behalf of the Republican National Committee, and two witnesses presented testimony on behalf of the Democratic National Committee.

Section 438(d) of title 2, United States Code and 26 U.S.C. 9009(c) require that any rules or regulations prescribed by the Commission to carry out the provisions of titles 2 and 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on June 23, 1994.

**Explanation and Justification****Part 107—Presidential Nominating Convention, Registration and Reports**

There are no substantive changes in this part. However, it has been reorganized so that reporting by convention committees is covered in § 107.1, and host committee reporting is addressed in § 107.2.

**Part 114—Corporate and Labor Organization Activity****Section 114.1 Definitions**

In paragraph 114.1(a)(2)(viii), the citations to the convention rules have been amended to correspond to the proposed reorganization of 11 CFR Part 9008.

**Part 9008—Federal Financing of Presidential Nominating Conventions**

The Commission has revised and reorganized its rules governing public financing of Presidential nominating conventions to address several issues that have arisen, and to make the convention regulations more consistent with the rules applying to publicly-

financed Presidential campaign committees. The reorganization of 11 CFR Part 9008 separates the rules concerning convention committees from those addressing host committee and local government activity. Thus, Subpart A of Part 9008 covers only convention committees and Subpart B contains the rules regarding host committees and local government activity.

**Subpart A—Expenditures By National Committees and Convention Committees**

Under the reorganization of Part 9008, Subpart A sets forth the rules relating to convention committees set up by the national party committees to make arrangements for the party's presidential nominating convention. Within Subpart A, the sequence of §§ 9008.1 through 9008.12 has been rearranged to follow the progression of convention activity from registration through use of funds and sources of contributions to, finally, audits and repayments. New §§ 9008.13 through 9008.16 have been added to follow similar provisions for publicly-financed Presidential candidates.

**Section 9008.1 Scope**

Section 9008.1 continues to explain the scope of the convention rules found in 11 CFR Part 9008. However, the provisions in previous paragraph § 9008.1(b) regarding reporting by host committees, government agencies and local municipalities have been deleted because they duplicate portions of new § 9008.51.

**Section 9008.2 Definitions**

This section generally follows former 11 CFR 9008.2.

**Section 9008.3 Eligibility for Payments; Registration and Reporting**

Paragraph 9008.3(a) now sets forth the eligibility requirements for receiving public financing, which were previously located in 11 CFR 9008.8(b). Paragraph (a) of § 9008.3 also reflects several changes in the agreements convention committees must submit as a condition of eligibility to receive public funding. First, the revised rules eliminate the requirement in previous paragraph § 9008.8(b)(4)(iv) that convention committees agree to establish a separate account for handling private contributions. One commenter supported the elimination of this requirement. If a convention committee were to accept private funds, either due to a decision not to accept its full entitlement of federal funds or due to a deficiency in the Presidential Election Campaign Fund, the new rules provide

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the option of either setting up a separate account or depositing private contributions with payments received from the Fund. See, paragraph § 9008.6(a)(3). This approach is consistent with the rules governing Presidential candidates who accept public financing for the general election.

Second, a new provision has also been added at paragraph § 9008.3(a)(4) requiring convention committees to agree to comply with the relevant provisions of title 2, United States Code, and the Commission's regulations implementing those provisions. This new condition parallels the candidate agreements for publicly-financed primary and general election Presidential candidates.

New language in the convention agreement provisions in paragraph § 9008.3(a)(4)(v) pertains to the production of computerized information on magnetic tapes or diskettes under new paragraph § 9008.10(h). This new language follows similar requirements set forth in 11 CFR 9003.1 and 9033.1 governing candidate agreements.

Language has also been added to paragraph (a)(4)(v) of § 9008.3 to indicate that the convention committee shall agree to provide the Commission, upon request, with copies of contracts with its vendors, and documentation regarding reductions, discounts, and items received in exchange for promotional consideration. The Commission received a wide range of comments on this requirement. One witness indicated a preference for including in the reports certain information on items provided at no charge, and supplying contracts during the Commission's audit, instead of attaching the contracts to the publicly-filed reports. Others saw no reason to provide or disclose documentation of discounts, deductions, and free items because, in their view, these are not contributions or expenditures and are not subject to convention spending limits. In contrast, one commenter urged the Commission to reverse its policy of permitting private in-kind contributions to host committees and convention committees because public funds were meant to replace large contributions from corporations, labor unions and wealthy individuals, which would, in the commenter's view, otherwise undermine the intent of the Federal Election Campaign Act and the integrity of public financing.

The Commission has concluded that its long-standing approach regarding vendor contracts is consistent with Congressional intent, and should be explicitly reflected in the regulations. Accordingly, the new language follows

the Commission's current practice of requesting contracts, when necessary, during the audit process. The provision of vendor contracts helps the Commission ensure that corporations are following their ordinary course of business in their transactions with political committees. Under revisions to paragraph § 9008.9, however, copies of vendor contracts need not be attached to convention committees' reports. Instead, paragraph § 9008.9(b) specifies the information to be reported by the convention committee when commercial vendors provide goods or services in exchange for promotional consideration arrangements.

The new rules at paragraph § 9008.3(a)(4)(v) follow previous 11 CFR 9008.8(b) by requiring convention committees to provide the Commission with copies of their contracts with host committees and municipalities upon request. The NPRM had proposed requiring convention committees to attach copies of these contracts to their regular reports.

The comments generally opposed additional reporting requirements, arguing that host committees do not utilize public funds, that the current requirement that contracts be made available upon request during Commission audits is sufficient, and that host committees are motivated by economic (not political) considerations. One commenter suggested that it would be onerous to require both the contract between the host committee and the convention committee, and documentation of vendor's contracts or discounts. The final rules in this section and section 9008.9 reduce the amount of documentation to be provided by convention committees with respect to vendor transactions and contracts with cities and host committees.

Paragraph § 9008.3(b) sets forth the registration and reporting requirements for convention committees previously found in 11 CFR 9008.12(b). The revised rules delete language in previous paragraph § 9008.12(b)(1)(ii) which had indicated that other committees and organizations representing political parties in making convention arrangements must register and report as political committees. This language is not necessary because these entities are already clearly subject to the registration and reporting requirements of the FECA. The reporting requirements have also been revised to track the reporting dates for political committees filing quarterly reports under Title 2. See, 11 CFR 104.5.

The NPRM proposed requiring that convention committees file their first quarterly report following either the quarter in which they receive their first

payment from the Fund or when they begin receiving funds or making disbursements for convention activity, whichever is earlier. These committees are able to obtain loans and begin making convention-related disbursements well before they receive their first public financing payment. However, this activity is not disclosed until three months after that payment is received. Earlier disclosure was suggested to provide a more contemporaneous picture of convention committee activity and to ease the burden of filing a comprehensive first report covering as much as a year's disbursements. When this change was suggested in the 1990 NPRM, one commenter indicated that it already files reports for the first quarter after beginning to make disbursements for the convention, and did not object to the earlier filing requirements. However, in its response in the current rulemaking, the commenter objected to earlier reporting where no public funds have been transferred to the convention committee. In contrast, another commenter supported the earlier reporting requirement, and suggested a threshold of no less than \$5,000 to trigger the filing requirements.

The final rules have been revised to follow the previous rules to reduce the number of reports that must be filed by convention committees.

#### Section 9008.4 Entitlement to Payments from the Fund

Section 9008.4 has been reorganized so that paragraphs (a) and (b) incorporate the rules previously found in § 9008.3 concerning entitlements to payments from the Fund. Paragraph (c) of § 9008.4 contains the provisions concerning the limitation on payments, which were previously located at 11 CFR 9008.5.

#### Section 9008.5 Adjustment of Entitlements

The provisions entitled "Adjustment of entitlement" have been moved to § 9008.5 from previous § 9008.4. With regard to the income from the investment of public funds, previous paragraph (b) of § 9008.4 has been removed and replaced with new 11 CFR 9008.12(b)(6). The new provision more closely follows the approach taken in the rules governing Presidential candidates who accept public funding. See 11 CFR 9007.2(b)(4) and 9038.2(b)(4).

#### Section 9008.6 Payment and Certification Procedures

Section 9008.6, "Payment and certification procedures", has been

moved from 11 CFR 9008.8 of the previous rules. In addition, paragraph (a)(2) has been revised by combining the rules for major and minor parties on when they may accept private contributions for convention expenses, and by addressing the possibility of a deficiency in the Fund. Unless there is a deficiency in the Fund, or the national committee does not accept all the public financing to which it is entitled, contributions cannot be accepted because they would cause the convention committee to exceed its spending limits, unless the committee had surplus funds left over. The Commission notes that under new section 116.5, payments by committee staff for convention expenses are treated as advances, and therefore as contributions, until reimbursed. Thus, the question has arisen as to the maximum amount a convention committee can accept in staff advances if it provides reimbursement and accepts full public funding. Given that the convention committee is established, financed, maintained and controlled by the national committee, and is therefore affiliated with the national committee, it shares the national committee's \$20,000 contribution limit. The NPRM sought comment on including in the convention regulations language to this effect.

The witnesses at the hearing agreed that convention committees are affiliated with the national party committees, and believed the existing rules and exceptions regarding staff advances that apply to political committees should control. While one thought additional language was unnecessary, the other witness suggested specifically stating that the maximum amount an individual may contribute to the convention committee per year is \$20,000, and that a convention committee may accept up to \$20,000 in staff advances if it provides reimbursement and accepts full public funding. Further, this witness suggested amending proposed paragraph § 9008.12(c) to indicate that the convention committee is not obligated to repay a staff advance to the U.S. Treasury if it has made full reimbursement to the staff member and has not utilized the private contribution (even to the extent of the permissible \$20,000) to defray convention expenses.

The Commission agrees with this commenter's views, but does not believe additional language is needed in the regulations. While the Commission has reached this conclusion to accommodate the practice of staff advances, it should be noted that other

private contributions may be received only in accordance with paragraph (a) of this section.

As noted in the earlier discussion of § 9008.3, paragraph (a)(3) of 11 CFR 9008.6 offers convention committees the choice of setting up a separate account for private contributions or depositing them in the account used for payments from the Fund. This approach parallels that provided for publicly-financed general election candidates in 11 CFR 9005.2(c). Thus, convention committees' accounts must be maintained at depository institutions insured by the Federal Deposit Insurance Corporation. The 1979 amendments to the FECA also permitted political committees to establish campaign depositories at institutions insured by the National Credit Union Administration. However, the Commission has not made this option available to Presidential candidates or convention committees choosing to receive public funding because credit unions do not return canceled checks, thus preventing committees from providing adequate documentation for disbursements drawn upon credit union accounts. See, e.g., 11 CFR 9005.2(c). In the final version of paragraph (a)(3), the references to accounts insured by the Federal Savings and Loan Insurance Corporation have been deleted because these accounts are now insured by the Federal Deposit Insurance Corporation.

Finally, this section continues to permit the receipt of federal funds either in one lump sum or in a series of payments if the convention committee so requests.

#### Section 9008.7 Uses of Funds

With some minor changes for clarity, § 9008.7, "Use of funds," follows previous 11 CFR 9008.6.

The NPRM sought comments on whether a revision to this section is warranted to clarify the distinction between items which are convention expenses and must be defrayed with public funds (and count against the convention committee's expenditure limit) and expenses which are related to ongoing business of the national committee and are not properly paid for with public funds. Given that the convention not only serves as the vehicle for nominating the party's Presidential candidate, but is also used to conduct ongoing party business, the line between convention expenses and party expenses can be a fine one. However, the Commission has encountered instances in which the national committee has sought to pay for expenses that are clearly convention-related, particularly if the convention is

close to the expenditure limit. The Commission also wishes to ensure that public funds are used solely for running the nominating convention, and not for expenses related to party business.

The NPRM did not propose creating a presumption that expenses are convention-related if they are incurred by the convention committee or national committee around the time of the convention or within the convention city's locale (a suggestion which had been included in the 1990 NPRM). Comments on the 1990 NPRM opposed the creation of such a presumption, citing situations where they believed it could improperly result in the use of federal funds for party business.

The NPRM in this rulemaking indicated that the Commission had decided not to include such a presumption in the convention regulations. However, additional comments were sought on whether to amend the list of permissible convention expenses to exclude part or all of the salary and travel costs for those whose primary role is to conduct ongoing party business while at the convention. In particular, the Commission welcomed comments on how to allocate salary and travel costs for those who may split their time between party business and convention-related duties.

Subsequently, two commenters repeated their previous views that the convention regulations should provide assurances that public funds are spent on legitimate convention expenses, but that ultimately any attempt to spell out convention expenses would be both subjective and unworkable. Instead, they argued that the determination of what is considered a convention expense should be made on a case-by-case basis. The Commission heard testimony that it should not judge how committees spent their money, that increased regulation could infringe on First Amendment freedoms, and that convention committees should be allowed to allocate employees' salaries and expenses between the convention and the national committee on a reasonable basis, subject to review during the convention committee audit. A key criterion would be the amount of time spent on each function, and would require the committee to prorate the amount of time spent on each set of responsibilities. In contrast, another commenter opposed changing the current regulation, arguing that any additional formula is unnecessary. The comment urged adoption of a presumption that the national committee staff is working on national

committee business and not convention business.

The Commission has decided to continue its previous approach of listing in the rules the types of expenses that are convention-related, and thus subject to the convention spending limits. Adopting a completely case-by-case approach to this area would provide no guidance to committees trying to properly attribute their expenses. Accordingly, new § 9008.7 follows previous § 9008.6 by setting out the general principle that convention expenses include all expenses incurred by or on behalf of the national party committee or the convention committee with respect to, and for the purpose of conducting, the convention or convention-related activity. This includes all national committee activity in the convention city except for events clearly separate from the convention, such as fund raising events for the party committees, and meetings of the national committee unrelated to the convention.

New language has also been included in paragraph § 9008.7(a)(4)(xii) to reflect the Commission's policy that the convention committee may defray the costs of gifts or monetary bonuses for committee staff and convention officials for convention-related services, as long as the bonuses or gifts do not exceed \$150 per individual and \$20,000 total. Another new provision, paragraph § 9008.7(a)(4)(xiii), clarifies that the production costs of a biographical film or similar materials about a Presidential or Vice Presidential candidate may be paid for by the convention committee. However, if part or all of the film, or similar materials, is previously or subsequently aired or otherwise distributed by the candidate's primary or general election campaign committee or by a party committee, or is used in connection with fundraising, the campaign committee or party committee must pay the convention committee for the reasonably allocated costs of the films or materials used.

Paragraph (a)(5) of § 9008.7 has been modified so that it follows the Commission's past practice of seeking a repayment of interest earned on the investment of public funds, less any tax paid on the interest earned. This change is consistent with 11 CFR 9004.5, which governs interest earned by publicly-funded Presidential candidates.

Another issue raised in the NPRM concerns the sources of funds used to pay civil or criminal penalties pursuant to 2 U.S.C. 437g. Both previous paragraph § 9008.6(b)(3) and new paragraph 9008.7(b)(3) indicate that such funds are subject to the

prohibitions of 11 CFR 110.4 and Parts 114 and 115. Comments were sought as to whether these funds should also be subject to the contribution limits set forth in 11 CFR Part 110. One commenter urged the Commission to continue to permit convention committees to pay civil and criminal penalties with funds subject to the prohibitions, but not the limitations set forth in the Act, and not to treat amounts received or expended to pay such penalties as contributions or expenditures. The commenter pointed out that Congressional candidate committees and party committees are permitted to pay civil and criminal penalties with funds that do not meet the limitations or prohibitions of FECA, while publicly-financed primary and general election presidential candidates may pay penalties from funds not meeting the FECA's contribution limits. Another commenter noted that public funds may not be used to pay these penalties, and restrictions on private funds would deter violators from paying their fines, given that fines are levied months or years after the convention. A third commenter opposed both limiting the sources of penalty payments and subjecting penalty payments to contribution limits, arguing that penalties are not paid for the purpose of influencing federal elections, and thus, are not contributions under FECA.

The Commission views civil and criminal penalties as an outgrowth of election activities, and therefore properly subject to the Act's prohibitions, even if the funds received and expended are not contributions or expenditures. Consequently, paragraph § 9008.7(b)(3) generally follows the previous provision. However, the Commission is continuing to consider possible changes to the present approach in the ongoing rulemaking regarding its compliance regulations at 11 CFR part 111. See Notice of Proposed Rulemaking, 58 FR 36764 (July 8, 1993).

#### Section 9008.8 Limitation of Expenditures

Section 9008.8 generally follows previous § 9008.7 by setting out the expenditure limits for convention committees and an explanation of the categories exempted from application to that limit. Former § 9008.7 had also included rules pertaining to activities by state and local governments and host committees. As part of the reorganization of Part 9008, the substantive provisions governing contributions to and expenditures by host committees and local governments have been moved to new §§ 9008.52 and 9008.53. New language in paragraph

§ 9008.8(b)(3) provides some examples of the types of candidate expenses that may not be paid from the convention committee's public funds, including the costs of the candidate's transportation, meals and lodging.

Paragraphs (b)(1) and (b)(2) of § 9008.8 follow previous paragraph § 9008.7(d)(4) by indicating that expenditures made by government agencies and municipal corporations, or by host committees, will not count against the convention committee's expenditure limit if the funds are spent in accordance with the provisions of proposed §§ 9008.52 and 9008.53. Consequently, there may be situations in which host committees make impermissible expenditures which count against the convention committee's spending limits. As noted below, such situations could also be resolved through enforcement actions under 2 U.S.C. 437g.

In addition, the Commission sought comments on revised language in paragraph 9008.8(b)(4)(ii) restating the current policy that payments made by the national committee for legal and accounting expenses count against the convention spending limits if these expenses are incurred in connection with the convention or convention-related activities. As an alternative, comments were welcomed on exempting payments by the national party committee for legal and accounting expenses solely for complying with the FECA and the Fund Act, provided that such funds are raised in accordance with the limits and prohibitions of the Act. Under this alternative, such amounts would be reported, and need not be placed in a separate account.

Two commenters and witnesses generally urged that convention legal and compliance costs should be exempt from the spending limits. The reasons they advanced included the following: similar expenses are exempt for publicly-financed presidential candidates; such a policy would encourage compliance; and it would not be appropriate to spend public funds on noncompliance legal costs tangentially-related to the convention, such as a slip-and-fall case or litigation over vendors' contracts.

In light of the comments and testimony, the Commission has decided to change the provisions governing legal and accounting costs. Accordingly, revised paragraph § 9008.8(b)(4) creates a narrow exception to the convention spending limits for legal and accounting costs incurred in complying with the FECA and the Fund Act, so long as the contributions raised for this purpose



comply with the contribution limits and prohibitions. Thus, these contributions will be counted against the annual limit on contributions to the political committees established and maintained by the national political party of \$20,000 per person, and \$15,000 per multicandidate political committee. These contributions and payments must be reported by the convention committee on separate schedules of receipts and disbursements. This rule does not, however, prohibit the use of public funds to pay compliance expenses.

New paragraph (b)(5) has been added to section 9008.8 to indicate that the costs of complying with the technical requirements for submission of computerized records are not treated as convention committee expenditures, and therefore, are not subject to the expenditure limits set out in section 9008.8. This was suggested in response to the 1990 NPRM, which included provisions on computerized information in paragraph 9008.10(h). Although the comments reflected disagreement as to whether or not convention committees should be required to comply with the computerized magnetic media requirements (CMMR), they generally favored exempting the costs of producing, delivering and explaining the computerized information from the convention committee's spending limits. Another suggestion was that funds raised to pay the costs involved should not be considered contributions, and should not be subject to the contribution limits and prohibitions of the FECA.

The Commission has concluded that the costs of providing computerized information are similar to the costs of providing legal and accounting services. Therefore, the revised rules adopt the same approach for funds raised to pay CMMR expenses as for funds raised to pay legal and accounting costs.

#### Section 9008.9 Receipt of Goods and Services from Commercial Vendors

Section 9008.9 specifies the circumstances under which different types of businesses may make in-kind donations to convention committees. It has been substantially revised from previous 11 CFR 9008.7(c), and it resolves several questions that have arisen concerning in-kind donations.

(1) *Terminology.* This rulemaking presented the issue of the different terms used in different portions of the previous regulations to describe the kinds of businesses that may donate funds or make in-kind donations. For example, "retail businesses" were able to provide reductions or discounts to

convention committees. See previous 11 CFR 9008.7(c)(1). "Local businesses" were able to donate promotional items of nominal value to convention attendees, and to donate funds and in-kind contributions to host committees to promote the convention city and its commerce. See previous 11 CFR 9008.7(c)(2) and (d)(2). "Local retail businesses" were able to donate funds to the host committee to be used to defray convention expenses. See previous 11 CFR 9008.7(d)(3). Finally, under AO 1988-25, businesses of any type were permitted to seek official provider status, which would enable them to provide certain items at no charge, in exchange for being designated an official provider, or for other promotional consideration.

The NPRM questioned whether a basis continues to exist for these distinctions. The Commission considered whether to require that all businesses qualify as "local" to help ensure that their goal in offering goods and services is commercial rather than political. In the alternative, the Commission has considered whether these complex distinctions further the Commission's objectives of ensuring that corporations do not make prohibited contributions to political committees. The proposed rules would have retained the current distinctions, while clarifying the distinction between "retail" and "wholesale" businesses, and explaining when businesses qualify as "local" businesses under the Office of Management and Budget's *Revised Standards for Defining Metropolitan Areas in the 1990's*, 55 FR 12154 (March 30, 1990). In Advisory Opinion 1975-1, the Commission recognized two situations which would not violate 18 U.S.C. 610 (the predecessor to 2 U.S.C. 441b): volume discounts on goods or services purchased by the convention committee and donations to a group organized to promote the convention city. The rationale underlying these exceptions was that they reflected a commercial, rather than political, purpose by the business so involved.

The comments on the NPRM reflected no consensus on this issue. Some favored retaining the approach adopted in the current rules and Advisory Opinion 1988-25, while taking into account legitimate commercial interests of franchisees, branches and dealers affiliated with national corporations.

Some urged the Commission to apply these provisions to all businesses because the criteria for "local" and "retail" are confusing, the distinctions do not further the Commission's objectives, or because all businesses in a Metropolitan Area benefit from a

successful convention. Others supported the retention of the present distinction between "retail," "local," and "other business," and advocated changing the definition of "local business" so that it includes any company doing a sufficient level of business within the Metropolitan Area, whether or not the company has a physical presence there. This approach would not provide a workable standard that would enable either the Commission or businesses to know whether they are considered "local."

The Commission has decided to revise § 9008.9 to do away with the complex distinctions between businesses that are "local," "retail," "local retail," and "official providers." Instead, the term "commercial vendor" is used to define the types of businesses that may provide goods or services to convention committees at reduced or discounted rates, or for promotional consideration, or at no charge. "Commercial vendor" is defined in 11 CFR 116.1(c) to mean persons providing goods or services to a candidate or political committee, whose usual and normal business involves the sale, rental, lease or provision of those goods or services. Please note that donations of funds to host committees are covered by new §§ 9008.52 and 9008.53. Thus, the revised rules build upon the Commission's decisions in AO 1975-1 and AO 1988-25.

(2) *Standard commercial vendor reductions and discounts; goods or services provided for promotional consideration.* A related question involves the determination that reductions and discounts offered to the convention committee are in the ordinary course of business, or are commercially reasonable. Language was proposed during the previous rulemaking to explain the documentation that must be provided to the convention committee to demonstrate that a reduction or discount, such as a volume discount on hotel rooms, is within the vendor's ordinary course of business. Although concerns were raised that these documentation requirements were burdensome and impractical, others urged the Commission to adopt that approach.

The NPRM also focused on the practice of offering free items to the convention, such as pianos or cars. Proposed language in § 9008.9 sought to incorporate the approach taken in Advisory Opinion 1988-25 by permitting businesses to provide products and services at no charge if it is in the ordinary course of that vendor's business to provide products or services

in an equivalent amount and on similar terms, such as in return for recognition as an "official provider" of such products or services, to non-political groups or events. The Commission had previously proposed incorporating in the regulations the conclusion reached in Advisory Opinion 1988-25, and had considered whether the approach taken in that advisory opinion should be modified to require that products or services be provided at no less than the vendor's cost, notwithstanding the fact that the same business provides items at no charge to non-political clients. Compare AO 1975-1. Comments were also sought as to whether to establish exemptions for certain types of official providers, or those that provide products or services of less than a specified dollar amount. The NPRM also included proposed rules to ensure that in-kind donations are only made consistently with the provisions of the Act. Thus, the NPRM would have required that the vendor provide the committee with a description of what is provided, the terms of the reduction or discount, and a signed affirmation that this is in the ordinary course of business. It contemplated that vendors who do not have established practices of offering such discounts would be able to offer reductions or discounts that are consistent with established practices in their trade or industry. Comments were sought on whether certain types of retail businesses, such as restaurants, should be excluded from these documentation requirements. The Commission also requested comments on whether retail businesses providing less than a certain dollar amount of goods and services, or providing less than a certain percentage discount should also be exempt from the documentation requirements, and if so, what the appropriate amount or percentage would be.

One commenter urged the Commission to completely reverse its policy of permitting corporations to enter promotional consideration arrangements in connection with publicly financed conventions. However, several other commenters opposed modifying the result of AO 9188-25, arguing that official providers offer discounts to gain publicity and increased sales for their product, and questioning whether any instances of abuse existed. Consequently, one witness suggested that the Commission establish a presumption that local business involvement in convention activity is motivated by economic interests and not political involvement. These commenters opposed requiring vendors to sign affirmations that they

are acting in the ordinary course of their businesses. One argued that affirmations would go far beyond the Commission's established policy, and would deter vendor involvement because vendors would be reluctant to sign affirmations that include terms such as "established," "promotional," or "commercial benefit." Thus, one comment viewed the proposal as an attempt to second guess the business judgment of the vendor, and noted that it is sometimes difficult to value goods or services. Two comments urged the Commission to issue less burdensome rules, arguing that the additional documentation requirements are unnecessary because vendors offer discounts to obtain profitable business, not to influence federal elections. The witnesses at the hearing stated that the requirement that the in-kind donation not exceed the value of the commercial benefit was a subjective, hard to define standard. Instead of providing an affirmation, they preferred disclosing information on in-kind donations in their reports, such as the vendor's name, and the nature and value of the goods or services provided, if this could be done in a non-burdensome manner.

The final rules regarding items provided for promotional consideration have been modified in several respects. First, the final rules indicate that discounts, reductions and free items may be offered by all commercial vendors, and are not restricted to local or retail businesses. These transactions must be in the ordinary course of business. The rules further define ordinary course of business. In addition, the proposed vendor affirmation requirement has been dropped from the final rules. Instead, the revised rules require the convention committee to maintain certain documentation of promotional consideration arrangements and to disclose in its reports a general description of the goods or services provided, together with the name and address of the provider. This disclosure requirement is designed to be non-burdensome, yet sufficient to facilitate enforcement of the statutory prohibitions and limits by subjecting promotional consideration arrangements to public scrutiny.

One comment suggested that proposed paragraph § 9008.9(a)(2) be clarified to emphasize that "official provider" status is not the only form of promotional consideration since a convention committee may not want to provide exclusive rights to a particular vendor with respect to certain categories of goods or services. The Commission notes that § 9008.9 covers commercial vendors wishing to enter into a variety

of promotional arrangements, and is not narrowly limited to "official providers."

The new rules generally continue the current policy of permitting commercial vendors to provide items of *de minimis* value, such as maps, pens, pencils or other similar items included in tote bags for those attending the convention. See previous 11 CFR 9008.7(c)(2). Finally, paragraph (d) of revised § 9008.9 specifies that goods and services received in accordance with this section do not count against the convention committee's spending limits.

(3) *Reporting.* Another issue raised during this rulemaking was whether convention committees should be required to report their receipt of reductions, discounts, and items provided for promotional consideration from businesses, including a statement of what was provided and its value, or whether the contracts themselves should be placed on the public record. There was little, if any, consensus among the commenters regarding these proposals. One comment noted that since issuing AO 1988-25, the Commission has required committees to demonstrate that donations or discounts were in the ordinary course of a vendor's business, but believed that it would be extraordinary for the Commission to require the disclosure of the actual contract or to require that the contract state that the vendor is following its ordinary course of business. One witness favored reporting items received at no charge, but opposed reporting discounts given in the ordinary course of business, or attaching contracts to reports. The witness noted that the Commission's long-standing policy has been that items provided in the ordinary course of business are not "contributions" to the committee. Finally, one comment opposed reporting in-kind donations because in-kind donations frequently take forms that are difficult to quantify, and the value of donations fluctuates according to changes in the market.

The final rules in section 9008.9 do not require convention committees to routinely report the receipt of standard volume discounts, or reduced rates normally made available to certain types of customers, although they do require reporting of promotional consideration arrangements. The rules also continue the previous policy that items of *de minimis* value, such as maps, pens, and tote bags, need not be reported. The new rules also do not require committees to file copies of vendor contracts with their reports. Instead, the contracts must be provided upon request during the audit. At any time, the Commission may seek additional information regarding

transactions with commercial vendors, particularly if questions are raised as to whether a transaction is in the ordinary course of business, or results in the making and acceptance of a contribution.

#### Section 9008.10 Documentation of Disbursements; Net Outstanding Convention Expenses

Under the previous regulations at 11 CFR 9008.8(b)(4)(v), committees were required to restate in the convention committee agreement all the documentation requirements for proving that expenses are convention-related. The revisions to these rules now follow the format of the regulations for publicly financed Presidential candidates by only stating in the convention committee agreement that the committee agrees to comply with the documentation requirements (see paragraph § 9008.3(a)(4)(iv)), and setting forth the actual documentation provisions in a separate section. Thus, § 9008.10 now contains the substantive rules regarding the production of evidence of convention expenses.

In addition, § 9008.10 has been redrafted to conform to the documentation requirements for publicly financed candidates. See, 11 CFR 9003.5 and 9033.11. For example, the term "particulars" has been changed to "purpose of the disbursement." Also, the language in paragraph § 9008.10(a)(4) regarding documentation of disbursements has been modified to indicate that pre-established written committee policies may include daily travel expense policies, but do not include general per diem policies which cover a longer time period or which include a broader range of expenses. This change is consistent with the approach the Commission took in revising the primary and general election rules for publicly funded candidates. See, 11 CFR 9003.5(b)(1)(iv) and 9033.11(b)(1)(iv). One commenter urged that convention committees be allowed to provide staff with fixed per diems in lieu of reimbursing actual expenses. Such an approach would be acceptable if it is reasonably calculated to cover the individual's actual expenses for transportation, lodging and meals, but not other expenses.

The Commission has added three new paragraphs to § 9008.10. New paragraph (f) clarifies that convention committees must retain records regarding their disbursements and receipts and present them for Commission review. The records retained by the committee should also reflect its compliance with 11 CFR 104.14. Paragraph (g) requires convention committees to provide a

statement of net outstanding convention expenses no later than 60 days after the last day of the convention, which should reflect its financial position as of 45 days after the convention. The statement must also be updated to reflect the committee's financial position as of nine months after the last day of the convention. The statement must be filed 30 days thereafter, which is also the date for the interim repayment of unspent funds under 11 CFR 9008.12(b)(5). This provision parallels the requirements for publicly financed Presidential candidates. See, 11 CFR 9003.5(d), 9004.9, 9033.11(d) and 9034.5. Such statements are intended to enable the audit process to be completed more expeditiously.

Finally, new paragraph (h) applies the Computerized Magnetic Media Requirements (CMMR) to publicly financed convention committees. The purpose of the CMMR is to establish uniform standards for producing computerized records maintained by publicly financed committees at the time of the Commission's audit. Rules applying the CMMR to publicly financed Presidential candidates became effective on October 3, 1990. See 55 FR 40377 (Oct. 3, 1990); see also, 57 FR 4453 (Feb. 5, 1992) (updating the requirements and broadening certain technical standards). During that rulemaking, the Commission noted its intention to include parallel requirements in the convention regulations. See Explanation and Justification, 56 FR 26392 (June 27, 1990). The basic rationale and explanation offered in the June 27, 1990 Explanation and Justification applies equally to convention committees. *Id.* The categories of computerized records sought from convention committees are fewer, however, in view of the conventions' narrower focus.

Several comments were opposed to these proposals, due to the perceived financial costs associated with altering their existing accounting systems and converting their data to a new format. One urged that any costs involved should be exempt from spending limits. Given that the Commission has not encountered problems in the past with computerized records maintained and used by the national parties' convention committees, few if any, changes in these systems should be necessitated under the CMMR. As noted in the previous discussion of section 9008.8, the costs of complying with the CMMR are not expenditures by the convention committees, and are not subject to the national committees' spending limits for the convention.

#### Section 9008.11 Examinations and Audits

Section 9008.11 now contains the provisions on examinations and audits which were previously found at 11 CFR 9008.9. Also included is a new sentence signaling the Commission's intention to follow the same procedures during audits of convention committees as it now does when auditing the committees of publicly financed Presidential candidates. Please note that the December 31st time frame for conducting the audit, which is specified in this section and 26 U.S.C. 9008.8(g), refers to the time period in which the Commission will commence the audit.

The Commission has deleted from the convention rules previous paragraph § 9008.11(e), regarding judicial review of Commission repayment determinations because judicial review procedures are spelled out in 26 U.S.C. 9010 and 9011.

#### Section 9008.12 Repayments

Section 9008.12 includes the bases for Commission repayment determinations, previously found in 11 CFR 9008.10. The repayment determination procedures previously set out in 11 CFR 9008.11 have been replaced by new language indicating the Commission's intention to follow the same procedures and offer the same opportunities to convention committees as are provided for publicly financed candidates during the repayment process. See 11 CFR 9007.2 and 9036.2. If in the future the Commission makes changes to the repayment rules applicable to Presidential candidates, corresponding changes would be made for the convention regulations.

In addition, paragraph § 9008.12(b)(5)(ii) continues the current requirement that convention committees make an interim repayment of unspent funds, but changes the time frame to 30 days after the end of the ninth month after the last day of the convention. A final repayment of unspent funds must be made no later than 24 months after the end of the convention, both under previous paragraph § 9008.10(a)(3) and new paragraph § 9008.12(b)(5)(iii).

One commenter argued that the current requirement of an interim repayment six months after the convention should be eliminated, because six months is an insufficient amount of time to determine the amount needed to satisfy remaining bills, claims, and disputes. Instead, the commenter supported an 18 month or 24 month overall time frame for making repayments.

As noted above, the final rules extend the time period for the interim

repayment and retain the 24 month deadline for the final repayment. The provisions in paragraph § 9008.12(b)(5)(ii) adequately address the commenter's concerns by allowing for the certification of payments to the convention committee of amounts needed to defray additional convention expenses, where the convention committee has already made an interim repayment.

With regard to the income from the investment of public funds, new 11 CFR 9008.12(b)(6) replaces previous paragraph § 9008.4(b). The new provision more closely follows the approach taken in the rules governing Presidential candidates who accept public funding. See 11 CFR 9007.2(b)(4) and 9038.2(b)(4).

The NPRM sought comments on how to address situations where a host committee receives contributions from impermissible sources, such as nonlocal businesses, which are then used to defray convention expenses or for other permissible purposes. In some cases, it may be appropriate to count these amounts against the convention committee's spending limits, although there may be situations where enforcement actions are warranted.

Several commenters argued that it would be more effective to handle these situations through enforcement than by imposing oversight responsibility and liability on the convention committees, because convention committees, host committees, and municipalities have different agendas. Several commenters and witnesses indicated that it may be appropriate to pursue the convention committee if it acts with knowledge, consent, or acquiescence in an unlawful act, but it would be unfair to impose accountability on convention committees when they are unaware of, or do not consent to, the unlawful actions of a host committee or city. Two witnesses testified that host committees conduct fundraising autonomously from the convention committees, although the two entities have an on-going daily relationship during the convention planning process.

In response to the concerns raised, the Commission notes that neither the current nor the revised rules in § 9008.12(b)(7) impose strict or vicarious liability on convention committees for the actions taken by cities or host committees. Instead, convention committees are accountable for the actions of cities or host committees when they knowingly help or assist or participate in conducting impermissible activities, including initiating or instigating the activity. Thus, the rules preserve the

Commission's ability to proceed in the manner appropriate to a particular case, such as through the repayment process or enforcement.

#### Section 9008.13 Additional Audits

The Commission's authority to conduct other audits or investigations of a committee in an appropriate case is set forth in new § 9008.13. It follows similar provisions for publicly financed Presidential candidates. See 11 CFR 9007.4 and 9039.3.

#### Section 9008.14 Petitions for Rehearing; Stays of Repayment Determinations

This new section governs petitions for rehearing after the Commission's final repayment determination, and stays of repayment determinations pending appeal. It indicates that the Commission expects to follow the same procedures regarding rehearings and stays requested by convention committees as it uses for publicly funded Presidential candidates. See 11 CFR 9007.5 and 9038.5.

#### Section 9008.15 Extensions of Time

Section 9008.15 governs committee requests for extensions of time under Part 9008. This new provision conforms to the Commission's established policies concerning extensions of time. See 11 CFR 9007.3 and 9038.4.

#### Section 9008.16 Stale-Dated Committee Checks

Section 9008.16 has been added to provide procedures for handling stale-dated committee checks, and is based on similar provisions applicable to Presidential candidates accepting public funding. See 11 CFR 9007.6 and 9038.6. A minor change from the wording contained in the NPRM reflects that this provision applies to all stale-dated checks, not just those made out to creditors or contributors.

#### Subpart B—Host Committees Representing a Convention City; Convention Expenditures by Government Agencies and Municipal Corporations

This subpart has been created to separate the rules governing host committees, government agencies and local municipalities from the regulations on publicly financed convention committees. As explained below, it includes portions of previous §§ 9008.1, 9008.7, 9008.9 and 9008.12.

#### Section 9008.50 Scope

This new scope section alerts host committees, government agencies and municipalities to the registration and reporting requirements, and generally

describes the areas covered by Sub B. It follows previous paragraph 9008.1(b) by indicating that the reporting requirements do not apply to unsuccessful efforts to attract a convention.

#### Section 9008.51 Registration and Reports

This section contains the registration and reporting requirements applicable to host committees, which were previously located in 11 CFR 9008.12. It also includes new provisions regarding reporting by municipal corporations and other government agencies.

##### (1) Host committee reports.

Paragraphs (a) and (b) of § 9008.51 contain the rules governing host committee registration and reporting found at former 11 CFR 9008.12(a). The NPRM had proposed requiring host committee to file reports beginning in the first quarter of the presidential election year, rather than with the post-convention report. Another proposal would have required host committees to itemize their receipts and disbursements to the extent required by 11 CFR Part 104. One comment argued against the dual burden of earlier disclosure deadlines and itemization of receipts, in the absence of a demonstrated defect in the current regulations. The Commission notes that section 437 of the FECA does not discuss pre-convention reporting by host committees. Consequently, 11 CFR 9008.51 (a) and (b) now follow the approach set out in previous § 9008.12(a), except that the deadline for filing quarterly reports was changed to correspond to the filing deadline for quarterly reports filed under Title 2.

(2) Reporting by municipalities. New paragraph 9008.51(c) addresses reporting by municipal corporations and other local government agencies. This provision implements 2 U.S.C. 437(1) by requiring reporting by committees or organizations representing "a State, or a political subdivision thereof, or any group of persons, in dealing with officials of a national political party" on matters relating to a national nominating convention to be held in that State or political subdivision. This statutory language can be read to require reporting by an entity established by a state or local government, other than a host committee, to receive funds and make disbursements for a convention in that locality, although in the past these entities have not had to register and report. Consequently, the Commission considered specific disclosure requirements for municipalities and other government agencies providing services and facilities to a national



nominating convention. Expenditures by these entities are largely for the same purposes as those permitted by the regulations for host committees. See, §§ 9008.52 and 9008.53. Advisory Opinions 1982-27 and 1983-29 permit the acceptance of private donations by these entities to defray convention expenses. See discussion of 11 CFR 9008.53. For these reasons, the Commission believes that reporting by these entities will serve an important disclosure function.

The opponents of new reporting rules suggested instead that municipalities file copies of written contracts between the national committees and the cities they select. In the NPRM, the Commission indicated that it was considering whether to require municipalities to file reports which include copies of these contracts. Although this approach would result in public disclosure of amounts specified in the contracts, it would fail to publicly disclose the amount actually spent or the amount raised from private funds. Accordingly, the Commission also considered alternative reporting provisions in light of the increased roles municipalities have played in recent conventions. The reporting proposals included in the NPRM were designed to accomplish meaningful disclosure with as little burden on municipalities as possible.

Four comments responded to the issues raised in the NPRM, and the proposed language in paragraph § 9008.51(c). One commenter endorsed the suggestion that municipalities be required to report the source of funds received for hosting the convention. However, three other comments opposed the reporting provision for various reasons. Some thought the Commission has misinterpreted the meaning of 2 U.S.C. 437(1) by seeking to apply it to municipalities and government agencies, instead of continuing to interpret the term "represent" a state, political subdivision or any group of persons to only apply to a host committee or other organization which deals with officials of a national party. One argued that this approach would be inconsistent with, and would undermine, Advisory Opinions 1982-27 and 1983-29. Some believed that the Commission has not demonstrated a change of circumstances to merit changing its policy, and that cities already make various kinds of reports regarding receipts and expenditures of their funds. Another concern was that disclosure would be costly and deter municipalities from hosting conventions. The commenters and witnesses indicated that

municipalities host political conventions to showcase their cities, hoping to attract other events of economic benefit, such as the Olympics or the Super Bowl.

The Commission has concluded that changes in the way convention financing operates, which have occurred since AOs 1982-27 and 1983-29 were issued, have made it necessary to add new reporting provisions to ensure adequate public disclosure in the future. The new rules at paragraph § 9008.51(c) reflect a permissible interpretation of the statutory wording. In formulating new reporting requirements, the Commission has sought to ensure that adequate public disclosure is accomplished without imposing unduly burdensome requirements on municipalities and other governmental entities.

Under new paragraph § 9008.51(c), municipal corporations and government agencies must file a statement with the Commission listing general categories of convention-related facilities and services it provided to the convention, the total cost of providing such facilities and services, the total amount of general revenues and the total amount of private funds donated to a separate account to pay for these activities. The new rules also include a list of broad categories of expenses, to assist municipalities in providing the general information needed.

#### Section 9008.52 Receipts and Disbursements of Host Committees

The description of host committees has been moved from previous 11 CFR 9008.7(d)(1) to new paragraph § 9008.52(a). One commenter opposed the creation and use of host committees because they receive funds from sources that public funds were meant to replace, but favored earlier reporting by host committees.

Paragraph (b) of new § 9008.52 recognizes that host committees may accept goods and services from commercial vendors at reduced or discounted rates, as well as items provided in exchange for official provider status, subject to the requirements of § 9008.9, including reporting. One commenter argued that there should be a presumption that local businesses are motivated by commercial, not political gain; therefore, they should be exempt from additional documentation requirements when making these types of donations to host committees or municipalities. The elimination of the vendor affirmations, which is discussed above, addresses this concern.

Paragraph (c) of this section, and a cross-reference in new § 9008.53, indicate that both host committees and government agencies and municipalities may accept monetary and in-kind donations from local businesses and other local organizations and individuals to defray a variety of expenses for promoting the convention city and paying for convention-related facilities and services. Section 9008.52(c) is based on previous 11 CFR 9008.7 (b) and (d)(3). Please note that the revised rules do not permit host committees or municipalities to pay salaries of those working for the convention committee or the national party, or to pay the convention committee's or the national party's overhead and administrative expenses related to the convention.

The term "local" is also explained in paragraph (c) of this section. Revised language has also been included to clarify that banks do not qualify as local businesses under this section.

#### Section 9008.53 Receipts and Disbursements of Government Agencies and Municipal Corporations

New § 9008.53 sets forth rules on special municipal funds established by municipal corporations and government agencies for the purposes enumerated in 11 CFR 9008.52 relating to the promotion of the convention city and paying certain convention expenses. Section 9008.53 parallels § 9008.52 with regard to transactions with commercial vendors and the definition of local businesses that may make monetary or in-kind donations for certain purposes.

The Commission sought comment on proposed language in paragraph (a)(2) intended to incorporate the conclusions reached in Advisory Opinions 1982-27 and 1983-29. Under these advisory opinions, convention cities were permitted to establish a municipal fund to receive donations and make disbursements in connection with a nominating convention, provided certain conditions were met. First, the fund must have been created to attract conventions and other events to the locality on a broad scale, and cannot have been established for the sole purpose of providing services and facilities to the nominating convention. Second, donations to the fund must be unrestricted and may not be designated for any particular use, including the nominating convention. One question was whether the creation of such a fund must be necessitated by a prohibition under local law against the use of general tax revenue for these purposes. Concerns were raised that this would be inconsistent with Advisory Opinion

1983-29. Consequently, the Commission has not included a requirement restricting the creation of such municipal funds to situations where local law prohibits using tax revenues for convention purposes.

New paragraph § 9008.53(b) also clarifies that banks do not qualify as local businesses under this section. All bank loans must meet the requirements of 11 CFR 100.7(b)(11). The revised rules also remove the previous requirements that only retail businesses can donate funds.

Finally, the revised rules no longer include the requirement that the amount of the donation be proportionate to the commercial return reasonably expected during the life of the convention. In response to questions raised in the NPRM, one comment objected to applying this criterion to donations from businesses, particularly if the commercial return is measured only during the life of the convention. Accordingly, the new rules recognize that local businesses and organizations that donate to municipal funds are motivated by commercial and civic reasons, rather than election-influencing purposes.

#### Section 9008.54 Examinations and Audits

New § 9008.54 sets out the basic rule regarding Commission audits of host committees, which was previously set forth at 11 CFR 9008.9. Consistent with the rules applicable to convention committees, § 9008.54 includes a sentence indicating the Commission's intention to follow the same procedures during audits of host committees that it uses when auditing committees of publicly-financed Presidential candidates. In the case of host committees, however, the Commission does not make any repayment calculations because host committees do not receive public funds. Please note that the December 31st time frame for conducting the audit refers to the time period in which the Commission will commence the audit.

#### Additional Issues

The NPRM indicated that questions had been raised as to whether Title VI of the Civil Rights Act of 1964 is applicable to the selection of delegates to the federally funded national nominating conventions. Under Title VI, "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." 42 U.S.C. 2000d.

The U.S. District Court for the District of Columbia ordered the Commission to promulgate rules under Title VI governing the selection and allocation of delegates to the federally-funded nominating conventions. *Freedom Republicans Inc. v. Federal Election Commission*, 788 F. Supp. 600, 601 (D.D.C. 1992). However, on appeal the D.C. Circuit vacated the district court's decision on jurisdictional grounds. *Freedom Republicans Inc. v. Federal Election Commission*, No. 92-5214, slip op. at 2, 15 (D.C. Cir. Jan. 18, 1994). While awaiting the decision of the Court of Appeals, the Commission welcomed public comments on what impact, if any, Title VI may have on federally-funded national nominating conventions. One of the witnesses stated that it was inappropriate to comment because this particular rulemaking does not address the issue. Another witness indicated that his party would meet any foreseeable delegate selection standard the Commission might adopt, and therefore had no opinion on the issue. In view of the D.C. Circuit decision, the Commission has decided not to issue regulations under Title VI regarding delegate selection at this time.